

1 JOSEF D. COOPER (53015)  
 2 TRACY R. KIRKHAM (69912)  
 3 JOHN D. BOGDANOV (215830)  
 COOPER & KIRKHAM, P.C.  
 357 Tehama Street, Second Floor  
 San Francisco, CA 94103  
 4 Telephone: (415) 788-3030  
 Facsimile: (415) 882-7040  
 5 E-mail: jdc@coopkirk.com  
 Co-Lead Counsel for Indirect-Purchaser Plaintiffs

6 KAMALA D. HARRIS  
 7 Attorney General of the State of California  
 KATHLEEN FOOTE (65819)  
 8 Senior Assistant Attorney General  
 EMILIO E. VARANINI (163952)  
 9 455 Golden Gate Avenue, Ste. 11000  
 San Francisco, CA 94102  
 10 Telephone: (415) 703-5908  
 Facsimile: (415) 703-5480  
 11 E-mail: Emilio.Varanini@doj.ca.gov  
 Attorneys for the State of California On Behalf of All Attorneys General

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### UNITED STATES DISTRICT COURT

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### NORTHERN DISTRICT OF CALIFORNIA

14

### OAKLAND DIVISION

16 In re DYNAMIC RANDOM ACCESS	) Case No. M-02-1486-PJH
MEMORY (DRAM) ANTITRUST	) MDL No. 1486
17 LITIGATION	)
	<b>INDIRECT PURCHASER PLAINTIFFS</b>
18 This Document Relates to:	<b>AND ATTORNEYS GENERAL'S JOINT</b>
ALL INDIRECT PURCHASER ACTIONS	<b>NOTICE OF MOTION AND MOTION TO</b>
19 and	<b>DISTRIBUTE SETTLEMENT FUNDS</b>
20 <i>State of California et al. v. Infineon</i>	) Hearing Date: May 18, 2016
<i>Technologies AG, et al.</i>	) Time: 9:00 a.m.
21 <i>State of New York v. Micron Technology Inc., et</i>	) Courtoom: 3, 3rd Floor
<i>al.</i>	) The Honorable Phyllis J. Hamilton
22 <i>State of California et al. v. Samsung Electronics</i>	)
<i>Co., Ltd., et al.</i>	) Case No. C 06-4333 PJH
23 <i>State of California et al. v. Winbond Electronics</i>	)
<i>Co.</i>	) Case No. C 06-6436 PJH
24 <i>Petro Computer Systems, Inc. v. Hitachi, Ltd.</i>	)
)	) Case No. C 07-1347 PJH
25 <i>Petro Computer Systems, Inc. v. Mitsubishi</i>	)
<i>Electric Corporation, et. al.</i>	)
26 <i>Petro Computer Systems, Inc. v. Toshiba</i>	)
27	) Case No. C 07-2589 PJH
	) Case No. C 12-5213 PJH
	) Case No. C 12-5214 PJH



	<b><u>Page</u></b>
1 <b>TABLE OF CONTENTS</b>	
2    NOTICE OF MOTION AND MOTION .....	1
3    MEMORANDUM OF POINTS AND AUTHORITIES .....	2
4    I.    INTRODUCTION AND SUMMARY OF DISTRIBUTION PROTOCOLS .....	2
5    II.   THE COURT'S PRIOR ORDERS .....	4
6      A.   Indirect Purchaser Settlement Class Plan of Distribution .....	5
7      B.   Government Purchaser Settlement Classes Plan of Distribution .....	6
8    III.   THE SETTLEMENT FUND ACCOUNTING .....	6
9    IV.   PROTOCOLS FOR THE PAYMENT OF THE INDIRECT PURCHASER SETTLEMENT CLASS'S CLAIMS .....	8
10     A.   Payment of Claims Administration Expenses and Establishment of Reserve.....	8
11     B.   Deduction of Attorneys' Fees, Expenses and Incentive Awards .....	9
12     C.   Claims Auditing and Processing for the Indirect Purchaser Settlement Class.....	10
13        1.   Claims-Filing Deadline for the Indirect Purchaser Settlement Class .....	10
14        2.   Audit Process to Identify Claims Eligible for Payment .....	11
15        3.   Claim Value Computation for Eligible Claims .....	12
16    V.   CONCLUSION .....	15
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

	<u>Page</u>
1 <b>TABLE OF AUTHORITIES</b>	
2 <u>Cases</u>	
3 <i>In re Elec. Carbon Prods. Antitrust Litig.</i> 4       622 F. Supp. 2d 144, 155 (D.N.J. 2007) .....	11
4 <i>In re Gypsum Antitrust Cases</i> 5       565 F.2d 1123, 1128 (9th Cir. 1977) .....	11
6 <i>Welch &amp; Forbes Inc. v. Cendant Corp. (In re Cendant Corp. Prides Litig.)</i> 7       233 F.3d 188, 194-197 (3d Cir. 2000). ....	11
8	
9	
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1                   **NOTICE OF MOTION AND MOTION**

2                   **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3                   PLEASE TAKE NOTICE THAT on May 18, 2016, at 9:00 a.m. or as soon thereafter as the  
4 matter may be heard, in the Courtroom of the Honorable Phyllis J. Hamilton of the United States  
5 District Court for the Northern District of California, located at 1301 Clay Street, Oakland, CA  
6 94612, the Indirect Purchaser Plaintiffs and Attorneys General will and hereby do move for entry of  
7 an Order appointing Rust Consulting, Inc. (“Rust”) as the Settlement Fund Administrator, and  
8 authorizing distribution of the Settlement Fund in accordance with the Court’s previous orders and  
9 the protocols set forth in this motion.

10                  This Joint Motion is based upon this Notice, the included Memorandum of Points and  
11 Authorities, the Declaration of Amy Lake of Rust; the Declaration of Juan Riveros; the Declaration  
12 of Josef D. Cooper; the Declaration of Terry Gross, any arguments and evidence that may be  
13 presented at any hearing before the Court on this motion, and on all other pleadings and papers on  
14 file in this action.

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1                   **MEMORANDUM OF POINTS & AUTHORITIES**

2                   **I. INTRODUCTION AND SUMMARY OF DISTRIBUTION PROTOCOLS**

3                   On June 27, 2014, this Court granted final approval of global settlements that provided  
4 injunctive relief and payments totaling \$310,720,000. The Court also approved awards of  
5 attorneys' fees and expenses, and incentive awards to the named plaintiffs and class  
6 representatives, as well as general plans of distribution for the net settlement proceeds to members  
7 of the Indirect Purchaser Settlement Class and the Government Purchaser Settlement Classes. All  
8 appeals from the Court's settlement approval order, its fee, expense and incentive awards, and the  
9 plans of distribution of the settlement proceeds to the Indirect Purchaser Settlement Class have  
10 been dismissed, and these orders are final. The settlement payments, with one exception, have  
11 been received and placed in interest-earning escrow accounts. Pursuant to the Court-ordered  
12 Notice of the settlements, settlement class members' claims for a payment from the settlement  
13 proceeds have been received and audited.

14                   The plan for the allocation and distribution of the settlement funds to the Indirect Purchaser  
15 Settlement Class provides for all cash payments, except that under certain specified contingencies,  
16 a *cy pres* distribution of a portion of the settlement proceeds would occur. These contingencies  
17 were: (1) if there were more than 5 million claims from a defined group of claimants, referred to as  
18 "Small Claims;" or (2) if the payment at single damages of all *bona fide* Small Claims were less  
19 than \$25 million. *See Report and Recommendations of Special Master, Part I* (Dkt. 2132) ("R&R  
20 Part I") at ¶24. The claims auditing has been completed, and it has been confirmed that neither of  
21 the two *cy pres* contingencies has been triggered. Accordingly, there is no *cy pres* element in the  
22 protocols proposed for this distribution to the Indirect Purchaser Settlement Class.

23                   In order to effectuate the distribution of the settlement funds to the Settlement Classes, Co-  
24 Lead Counsel and the Attorneys General (hereinafter collectively referred to as "the Settling  
25

1 Plaintiffs") intend to appoint Rust Consulting, Inc. ("Rust") as the Fund Administrator authorized  
 2 to make the Court-awarded payments to Co-Lead Counsel, the Attorneys General, the private  
 3 plaintiffs and class representatives, and to distribute the settlement proceeds in accordance with the  
 4 Court's prior Orders, and pursuant to the following protocols:

- 5     • All claims from members of the Indirect Purchaser Settlement Class submitted on or  
          before July 1, 2015 are to be considered timely.
- 6     • The Escrow Accounts at Union Bank, N.A. will be closed and the funds therein will  
          be transferred into an account at Huntington National Bank for the purpose of being  
          disbursed by Rust pursuant to the Court's Orders and awards.
- 7     • Rust's invoices for claims auditing and processing costs incurred to date will be paid  
          pursuant to the Order of the Court and the provisions for various defendants'  
          contributions in the settlement agreements.
- 8     • A reserve fund of \$1,250,000 will be established and maintained by Huntington  
          Bank for the purpose of paying future claims disbursement and other expenses.
- 9     • Rust has identified those claims from members of the Indirect Purchaser Settlement  
          Class that pursuant to the Plan of Distribution should be classified as "Small  
          Claimants" and paid from the \$25 million allocation of settlement funds to Small  
          Claims.<sup>1</sup> In addition, Rust identified 18,753 claims not classified as Small  
          Claimants that (as Large Claimants) would receive settlement payments less than if  
          they had claimed fewer DRAM modules and/or DRAM-containing products and

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25     <sup>1</sup> The Plan of Distribution defines a "Small Claim" as any claim that in a first pass calculation of a *pro rata*  
 26 distribution to all approved claimants would receive less than \$10.00, and a "Small Claimant" as a person  
 27 and entity with a "Small Claim." Although the Plan does not specifically define claims that result in a  
       payment of \$10.00 or more, for ease of discussion, all such claims will be referred to herein as, "Large  
       Claims," and "Large Claimants" are persons and entities with "Large Claims."

1           been classified as Small Claimants. However, if these claims were reclassified as  
 2           Small Claims by reducing the amount of the DRAM and/or DRAM-containing  
 3           products they claim, this inequity can be avoided. The Settling Plaintiffs submit that  
 4           logic dictates that all of these claimants would elect to reduce the number of  
 5           products claimed in return for a higher total settlement payment. Accordingly, the  
 6           Settling Plaintiffs have instructed Rust, pending confirmation from this Court, to  
 7           reduce the DRAM and/or DRAM-containing products sufficiently to reclassify these  
 8           claims as Small Claims.

- 10           • In all other respects, disbursements and distributions of the settlement funds to  
 11           members of the Indirect Purchaser Settlement Class and the Government Purchaser  
 12           Settlement Classes will follow the previously approved Plans of Distribution and  
 13           this Court's prior Orders.

## 15           **II. THE COURT'S PRIOR ORDERS**

16           On June 27, 2014, the Court granted final approval of settlements with Samsung, Winbond,  
 17           Infineon, Elpida, NEC, Micron, Mosel, Hynix, Nanya, Toshiba, Hitachi and Mitsubishi, certified an  
 18           Indirect Purchaser Settlement Class and Government Purchaser Settlement Classes, approved plans  
 19           of distribution, and entered final judgment in these actions.<sup>2</sup> It also awarded attorneys' fees and  
 20           expenses to counsel for the Indirect Purchaser Plaintiffs and the Attorneys General, and gave  
 21           incentive awards to the private plaintiffs and class representatives.<sup>3</sup>

23

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24           <sup>2</sup> See Order Granting Final Approval Of Settlements, Plans Of Distribution And Claims Protocols,  
 25           Certifying Settlement Classes, Finally Adopting Special Master's Report And Recommendations, Parts I  
 26           And II; Final Judgment Of Dismissal With Prejudice (Dkt. 2235).

27           <sup>3</sup> See Order Granting Award Of Attorneys' Fees, Reimbursement Of Expenses And Incentive Awards To  
 28           Plaintiffs; Finally Adopting Special Master's Report And Recommendations, Part III; Final Judgment (Dkt.  
 2234).

1                   **A. Indirect Purchaser Settlement Class Plan of Distribution**

2                   Under the plan of distribution for the Indirect Purchaser Settlement Class, individuals and  
 3 entities nationwide, who were indirect purchasers of DRAM, were eligible to submit claims  
 4 through a dedicated website (<http://www.dramclaims.com/>) or by mail, for purchases of DRAM  
 5 and products containing DRAM between 1998 and 2002. Subject to the two *cy pres* contingencies  
 6 noted above, the settlement proceeds are to be distributed as cash payments *pro rata* to class  
 7 members with approved claims. *See R&R Part I at ¶27.* Specifically, the plan of distribution  
 8 provides that:

- 10                  • A *pro rata* recovery amount will be calculated for each claimant on the basis of the  
                       amount of DRAM modules and DRAM-containing product purchases each made,  
                       according to a formula that weights the DRAM content of the various categories of  
                       DRAM-containing products and converts all purchases to a common unit of measure.  
                       The “value” of the DRAM in computers and other categories of DRAM-containing  
                       products will be determined from available data.
- 14                  • All small claimants (resellers and end users), defined as those claimants whose *pro rata*  
                       recovery amount is less than \$10, will have their recovery raised to that amount.
- 16                  • The total amount of recoveries to small claimants will be capped at \$50 million. If the  
                       total dollar amount of all small claimant recovery, after each claimant is raised to \$10,  
                       exceeds \$50 million, no distribution of individual checks will be made to this group.  
                       Rather, \$40 million will be distributed *cy pres* to the benefit of small claimants. [As  
                       stated above, this contingency has not been triggered and small claimants will be  
                       receiving checks.]
- 20                  • In the event that the number of small claims received is such that the total small  
                       claimants’ recovery (after enhancement to the \$10 minimum described above) does not  
                       exceed \$25 million, the difference between the amount being paid directly to small  
                       claimants and \$25 million will be distributed as follows: (1) first, the amount of the  
                       small claimants’ checks will be increased *pro rata* above \$10, up to a the estimated  
                       single damages suffered by each claimant as a result of his/her/its claimed purchases,  
                       until the available funds up to such \$25 million are exhausted; or (2) if this procedure  
                       for increasing small claimants’ checks does not exhaust the available funds up to such  
                       \$25 million, any remainder will be distributed *cy pres*. [This contingency has not been  
                       triggered and no *cy pres* distribution of the \$25 million for small claimants is being  
                       proposed.]
- 27                  • In the event that the *pro rata* distribution share of any claimant whose *pro rata* share  
                       would be greater than \$10 would exceed the estimated single damages suffered by

1 him/her/it as a result of their claimed purchases, their recoveries will be limited to their  
 2 estimated single damages. Any excess would be distributed *cy pres*.

3 R&R Part I at ¶24.

4 **B. Government Purchaser Settlement Classes Plan of Distribution**

5 The plans of allocation and distribution for the Government Purchaser Settlement Classes  
 6 were the product of an agreement between the Attorneys General of Class and Non-Class States.  
 7 Although members of the Government Purchaser Settlement Classes were not eligible to file claims  
 8 with the Claims Administrator under the terms of the settlement agreements, members of the  
 9 Government Purchaser Settlement Classes are to receive their share of the 1/9 of the net settlement  
 10 funds reserved for government entities to compensate such entities for their purchases of DRAM  
 11 and DRAM- containing products. See, *e.g.*, Dkt. 2234 at ¶ 69.

13 **III. THE SETTLEMENT FUND ACCOUNTING**

14 The settlement funds are currently held by the Escrow Agent, Union Bank, N.A. (“Union  
 15 Bank”) in multiple defendant-specific accounts. These accounts contain all of the payments that  
 16 defendants were obligated to make pursuant to the settlement agreements with two exceptions.  
 17 First, defendant Samsung is obligated to make an additional maximum payment of \$919,125 for  
 18 claims processing costs. Second, as previously reported to the Court, defendant Mosel Vitelic  
 19 encountered financial difficulties and was unable to pay its \$2,778,900 settlement obligation.  
 20 Mosel entered into a payment plan which requires it to make quarterly payments of \$104,208.75  
 21 until April 2019, and to pay 50% of all moneys it is able to collect, up to \$694,725, from a Hong  
 22 Kong arbitral award it obtained against a Chinese manufacturer. *See* June 23, 2014 Letter to the  
 23 Court (Dkt. 2227). To date, Mosel has paid \$913,670, leaving approximately \$1,865,230 to be paid  
 24 in the future.<sup>4</sup>

27 <sup>4</sup> “Declaration of Josef D. Cooper in Support of Motion to Distribute Settlement Funds,” filed concurrently  
 28

1       The Union Bank Escrow Accounts have been invested in instruments backed by the full  
 2 faith and credit of the United States Treasury (*i.e.*, T-Bills and T-Notes). These investments have  
 3 yielded interest at various rates over the years, which interest has added to the principal. In  
 4 addition, some of the defendants elected to make payments, with interest, over time. Expenses,  
 5 including the Escrow Agent's fees, and the costs of preparing tax returns for the funds have been  
 6 deducted from the Escrow Accounts.  
 7

8           Attached as Exhibit A to the Cooper Declaration is a reconciliation of the deposits, interest  
 9 earned and disbursements made from the funds in the Union Bank Escrow Accounts through April  
 10 30, 2016. The most significant deductions made to date are the Court-approved payments for  
 11 notice costs disbursed to Kinsella Media, Inc. and the fees and expenses paid to the Hon. Charles B.  
 12 Renfrew for his services as Special Master.<sup>5</sup>  
 13

14           The remaining significant payments to be made from the Escrow Accounts are the Court-  
 15 awarded attorneys' fees and expenses, the incentive awards to the private named plaintiffs, and the  
 16 payments owed to Rust for claims auditing and processing. In addition, as discussed below, a  
 17 portion of the settlement funds needs to be reserved to pay certain costs incurred and to be incurred  
 18 in the future in connection with the distribution of the settlement funds to claimants. Further, the  
 19 settlement funds will need to be divided between the Indirect Purchaser Settlement Class and the  
 20 Governmental Entities, who are entitled to 1/9th of the net settlement proceeds. After the  
 21 subtraction of Court-awarded fees and expenses, the payment of all current claims auditing and  
 22 processing expenses, the division of the funds with the Attorneys General, and the establishment of  
 23 herewith, at ¶ 4.  
 24

25           <sup>5</sup> See Stipulation and Order to Release Funds from Escrow Accounts to Pay Notice Costs, Dkt. 2180.  
 26 Paragraph 7 of the November 30, 2007 Order appointing Judge Renfrew (Dkt. 1788) and paragraph 6 of  
 27 each of the subsequent Orders continuing/expanding that appointment (Dkts. 2099, 2102 and 2126) all  
 provide that "[a]ll payments to the Special Master [for his services] shall be made from the settlement funds  
 and be allocated pursuant to the agreement of the parties . . . ."

1 a reserve for future expenses, the funds available for distribution to the Indirect Purchaser  
 2 Settlement Class as of April 30, 2016, was \$ 191,195,595. *See* Exhibit B to the Cooper Declaration  
 3 for this computation.<sup>6</sup>

4

5 **IV. PROTOCOLS FOR THE PAYMENT OF THE INDIRECT PURCHASER**  
**SETTLEMENT CLASS'S CLAIMS**

6

7 **A. Payment of Claims Administration Expenses and Establishment of Reserve**

8 Co-Lead Counsel and the Attorneys General retained Rust, which in turn retained economic  
 9 consultants at Nathan Associates Inc. (“Nathan”), to perform claims processing and auditing and to  
 10 provide economic and statistical guidance in the application of the Court-approved Indirect  
 11 Purchaser Settlement Class Plan of Distribution to the claims experience. To date, Rust and Nathan  
 12 have incurred \$1,787,071 in unpaid time and expenses.<sup>7</sup> After carefully checking those invoices,  
 13 the Settling Plaintiffs request the Court to authorize payment of \$1,7878,071 for claims  
 14 administration expenses, principally audit-related costs, reasonably incurred to date. *Id.*<sup>8</sup>

16 Counsel intend to use Rust as the disbursing agent to process payments to class members  
 17 with approved claims.<sup>9</sup> Accordingly, as an element of approval of the protocols for distribution,  
 18 Counsel request the Court to authorize the transfer of the funds in the settlement Escrow Accounts

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20<sup>6</sup> Given the low rate of interest currently afforded by government securities, this number is not expected to  
 21 change significantly before the distribution to claimants.

22<sup>7</sup> “Declaration of Amy L. Lake of Rust Consulting, Inc., Notice and Claims Administrator,” filed  
 23 concurrently herewith, at ¶ 32.

24<sup>8</sup> Under the terms of its settlement agreement, Samsung is required to separately pay its *pro rata* share of  
 25 the notice and claims expenses, up to \$2,500,000. *See* Samsung Settlement Agreement, ¶¶ 11, 20, 24,  
 26 attached as Exhibit 7 to the “Appendix to Report and Recommendations of Special Master,” filed January 8,  
 2013 (Dkt. 2135). Samsung has paid \$1,580,874.05 toward notice expenses. Samsung’s counsel is  
 27 currently reviewing the Rust statements prefatory to making its contribution to these claims expenses..

<sup>9</sup> Co-Lead Counsel believe that Rust was used in this capacity by the Direct Purchaser Plaintiffs in this  
 28 litigation.

1 to an account at Huntington Bank to be established by Rust for disbursement of the funds in  
 2 accordance with the Orders of this Court. This account will be established as a Qualified  
 3 Settlement Fund (“QSF”) and administered by Rust under Counsel’s supervision. Union Bank will  
 4 transfer to Rust the “administrator” role in accordance with Section 468B of the Internal Revenue  
 5 Code (26 U.S.C. § 468B) for the QSF, as outlined in the Escrow Agreements. Union Bank has  
 6 agreed to cooperate with Counsel and Rust in this transition.

8 Based on extensive experience with settlement distributions of similar magnitude, Rust  
 9 estimates that the cost of issuing distribution checks to the almost 400,000 Indirect Purchaser  
 10 Settlement Class members with approved claims, plus the anticipated level of class member inquiry  
 11 regarding the distribution process itself, as well as follow up regarding the distribution (*e.g.*,  
 12 questions about the amounts received, issues with changes of address, lost payments, uncashed  
 13 checks etc.) could be as much as \$1,173,754. *See* Lake Decl. at ¶ 33.

15 Plaintiffs suggest that a \$1.25 million reserve be established before distribution to class  
 16 members to pay all future expenses incurred in the distribution of the settlement funds.<sup>10</sup> In  
 17 addition, Co-Lead Counsel have identified certain litigation expenses, which are detailed in the  
 18 Declaration of Terry Gross filed concurrently herewith, that need to be presented to the Court for  
 19 payment. The reserve will provide a source of payment for these expenses as well.

## 20           **B. Deduction of Attorneys’ Fees, Expenses and Incentive Awards**

22 The Court’s judgment awarding attorneys’ fees in the amount of 25.2% of the gross  
 23 Settlement Fund (\$78,333,002), plus interest thereon, is now final. This award includes aggregate

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25           <sup>10</sup> Co-Lead Counsel believe that this reserve will be adequate for future expenses in light of Samsung’s  
 26 obligation to make a further contribution to these costs. For example, Samsung’s contribution to Rust’s  
 27 estimated \$1,173,754 future claims administration expenses would be \$280,248, with the reserve paying the  
 balance of \$893,506. That would leave a little more than \$356,000 in the reserve for other miscellaneous  
 expenses.

1 fees for all Indirect Purchaser Plaintiffs' Counsel and the Attorneys General, as well as specific  
 2 awards totaling \$653,002.00 to Berman DeValerio, the law firm appointed by the Special Master to  
 3 advocate for the interests of resellers, and Susman, Godfrey LLP, counsel for reseller Celestica,  
 4 who was invited by the Special Master to participate in the allocation process. As of April 20,  
 5 2016, the fees awarded have earned \$1,413,982 in interest. See Cooper Decl. Exhibit B. Pursuant  
 6 to the agreement of Co-Lead Counsel and the Attorneys General, after payment by Rust, of the  
 7 specific awards to Berman DeValerio and Susman Godfrey, Co-Lead Counsel for the Indirect  
 8 Purchaser Settlement Class will receive 80.8% of the attorneys' fee award and the Attorneys'  
 9 General will receive 19.2%. *Id.*

11 Cost and expense reimbursements in the amounts of \$5,685,230.00 and \$5,483,468.63,  
 12 respectively, have been awarded to Counsel for the Indirect Purchaser Settlement Class and the  
 13 Attorneys General, and incentive awards totaling \$120,000 have been awarded to the private  
 14 plaintiffs and the Indirect Purchaser Settlement Class representatives. *Id.* Following transfer of the  
 15 escrowed funds into the disbursement account, Rust will also make these payments.

### 17       C. Claims Auditing and Processing for the Indirect Purchaser Settlement Class

#### 18           1. Claims-Filing Deadline for the Indirect Purchaser Settlement Class

19       The Court set a claims-filing deadline of August 1, 2014,<sup>11</sup> although the Claims  
 20 Administrator continued to receive and process claims from members of the Indirect Purchaser  
 21 Settlement Class after that date. These claimants were advised that the Settling Plaintiffs would  
 22 determine whether to request that the Court approve their late claims, but that payment was not  
 23 guaranteed. Lake Decl. at ¶ 7. After almost a year of collecting late claims, Co-Lead Counsel  
 24 instructed Rust to alert claimants that after July 1, 2015, late claims would no longer be  
 25

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27       <sup>11</sup> See Order Granting Preliminary Approval (Dkt. 2174).

1 recommended for payment, and a posting on the settlement website stated that “[t]he deadline to  
 2 submit claims has passed.... Counsel will recommend to the Court that claims submitted after July  
 3 1, 2015 not be accepted.” *Id.*

4 In the interest of increasing the participation of class members in the settlement distribution,  
 5 Co-Lead Counsel and the Attorneys General recommend that the Court authorize payments to all  
 6 class members whose claims were filed by July 1, 2015, and were deemed eligible for payment  
 7 after conclusion of the audit process by Rust. Although the initial claims deadline was August 1,  
 8 2014, the distribution has not been delayed by the additional claims filed between August 1, 2014  
 9 and July 1, 2015, and considerations of overall fairness to the Settlement Class outweigh any  
 10 prejudice to those class members who filed in the “first wave” of claims by August 1, 2014.  
 11 However, the Settling Plaintiffs recommend that all claims filed after July 1, 2015 should be denied  
 12 as untimely. These potential claimants were notified on the dramclaims.com website that claims  
 13 filed after July 1, 2015 would not be accepted (which date was nearly one year after the original  
 14 cut-off date). Accepting claims filed after July 1, 2015, would add yet another round of claims  
 15 processing and would unnecessarily delay distribution to class members. *Id.* at ¶¶ 7, 10.

16 The Court has inherent discretion to allow or disallow “late filed” claims. *See In re Gypsum*  
 17 *Antitrust Cases*, 565 F.2d 1123, 1128 (9th Cir. 1977) (district court has discretion with respect to  
 18 the disallowance of late claims); *Welch & Forbes Inc. v. Cendant Corp. (In re Cendant Corp.*  
 19 *Prides Litig.)*, 233 F.3d 188, 194-197 (3d Cir. 2000) (until the fund created by settlement is actually  
 20 distributed, the court retains its traditional equity powers to protect unnamed but interested persons;  
 21 a court may assert this power to allow late-filed claims); *In re Elec. Carbon Prods. Antitrust Litig.*,  
 22 622 F. Supp. 2d 144, 155 (D.N.J. 2007) (permitting late claimants to share in settlement proceeds).

## 26       **2. Audit Process to Identify Claims Eligible for Payment**

27       Rust received 449,979 claims through the original August 1, 2014 deadline. Lake Decl. at ¶  
 28

1       6. Rust received an additional 19,508 claims between August 1, 2014 and July 1, 2015. *Id.* at ¶¶ 6,  
 2       9. All claims received by July 1, 2015 have been audited and/or processed. *Id.* at ¶ 7. All claims  
 3       were standardized by converting the different types of DRAM-containing products claimed by class  
 4       members into a common measure, called a computer equivalent unit or CEU. Cooper Decl. at ¶15.  
 5       The 68 claims received after July 1, 2015, represent 316,400 CEUs, and have not been audited and  
 6       are not recommended for payment. Lake Decl..at ¶ 10.  
 7

8           Following an extensive claims analysis and auditing process (described in the Lake Decl. at  
 9       ¶¶ 12 – 25), Rust, with the assistance of Dr. Juan Riveros, determined that a total of 445,553 of the  
 10       469,487 claims received before July 1, 2015 were *bona fide* claims, which, if all were considered  
 11       timely, would be eligible to participate in the distribution of the Settlement Funds. *Id.* at ¶¶9, 26.  
 12       Since Co-Lead Counsel and the Attorneys General are requesting that the Court consider these  
 13       claims as timely received, they are encompassed within the claims referred to collectively as  
 14       “Eligible Claims.” Based upon this analysis and calculations, the total Eligible Claims represent  
 15       217,387,799 CEUs. *Id.* at ¶27.<sup>12</sup>  
 16

### 17           **3. Claim Value Computation for Eligible Claims**

18           The plan of distribution provides that as an initial matter, a purely *pro rata* division of the  
 19       funds available for distribution be made in order to identify and categorize the Eligible Claims into  
 20       two groups: (1) “Small Claims” and all other claims, which for ease of identification are referred to  
 21       as, “Large Claims.” “Small Claims” are those where the recovery in this initial computation would  
 22       be less than \$10.00. After the deductions of all amounts currently payable from the settlement  
 23       funds and the establishment of the reserve from future expenses, there is approximately \$191.2  
 24  
 25

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26       <sup>12</sup> See also, “Declaration of Juan F. Riveros,” filed concurrently herewith, at ¶9. The number of CEUs used  
 27       for the final distribution calculations will be about 300,000 less due to the withdrawal of products from the  
 18,753 Large Claims that benefit from being reduced to Small Claim status. See, Section IV.B.3, below.

1 million available for distribution to members of the Indirect Purchaser Settlement Class with  
 2 Eligible Claims. Riveros Decl. at ¶9. Dr. Riveros computed that any claim for fewer than 11.37  
 3 CEUs would have a *pro rata* payment amount of less than \$10.00, and thus would qualify as a  
 4 “Small Claim.” *Id.* This meant that “Large Claims,” i.e., those with a recovery of at least \$10.00,  
 5 began at a threshold of 11.37 CEUs. *Id.*

7 The central concept of the Plan of Distribution adopted by the Court was that the amount of  
 8 settlement recovery going to each claimant would be proportionate to the amount of price-fixed  
 9 DRAM purchased during the conspiracy period, and thus, proportionate to the amount of the  
 10 claimant’s injury. The Plan also provided that a minimum benefit of \$25 million would flow to  
 11 Small Claimants, either directly in monetary payments, or indirectly in the form of a hybrid direct  
 12 and *cy pres* distribution if the payment of all Small Claims at full single damages did not exhaust  
 13 the \$25 million. However, application of the language used in the Plan as a mathematical formula  
 14 to the actual claims experience resulted in an unintended and demonstratively unfair result. When  
 15 the \$25 million allocated to Small Claims was divided *pro rata* among claimants with less than  
 16 11.37 CEUs, the resulting settlement payment for “Small Claims” of approximately 11 CEUs was  
 17 around \$200.00. Riveros Decl. at ¶10. The problem was that the recovery for the smallest “Large  
 18 Claim” at approximately 12 CEUs remained unchanged and was still around \$10.00. *Id.*  
 19

20 That Small Claimants with just under 11.37 CEUs would receive substantially higher  
 21 individual settlement payments than Large Claimants who were just above the 11.37 CEU cut-off  
 22 would not only be patently unfair, it would also be in conflict with the central concept of an “injury  
 23 dependent” distribution of the settlement proceeds. Accordingly, Co-Lead Counsel asked Dr.  
 24 Riveros to determine the number and identity of those Large Claimants who would receive more  
 25 money if their claims were adjusted so that they would fall below the top of the Small Claims  
 26 threshold. Dr. Riveros identified 18,753 such claims. *Id.* Based on the assumption that no  
 27

1 claimant, if given the election, would refuse to reduce the number of DRAM modules and/or  
 2 DRAM-containing products claimed in return for an increased settlement payment, Co-Lead  
 3 Counsel and the Attorneys General directed Dr. Riveros to make this adjustment and reduce all  
 4 18,753 of these Large Claims to the Small Claims threshold. *Id.*

5 The next step was to determine if the entire \$25 million allocated to Small Claims can be  
 6 distributed without reaching the single damages cap and triggering the need for a *cy pres*  
 7 distribution. Dr. Riveros relied on the overcharge computations made by Dr. Paul Liu, the expert  
 8 economist retained by the Direct Purchaser Plaintiffs in this litigation, and other data to calculate  
 9 that single damages per CEU were between \$17 and \$19. *Id* at ¶12-13. With the above adjustment,  
 10 there are 443,321 Small Claims representing a total of 1,564,951 CEUs, which results in a  
 11 settlement recovery of approximately \$15.97 per CEU – or less than full single damages. Riveros  
 12 Decl. at ¶11. Accordingly, the *cy pres* provision in the Plan of Distribution for distribution of the  
 13 \$25 million to Small Claimants is not triggered. Small Claimants will receive an average recovery  
 14 of \$56 per claimant. *Id* at ¶13. Lake Decl. at ¶ 29.

17 All funds in excess of the \$25 million specified for the payment of Small Claims,  
 18 approximately \$166.2 million, will be distributed *pro rata* to Large Claimants. Riveros Decl. at  
 19 ¶14. There are 2,232 claims in this pool (after the above-described adjustment), but they represent  
 20 215,822,847 CEUs, a significantly larger total than that encompassed by Small Claims. *Id.* Each  
 21 claimant will receive approximately \$0.77 per CEU, although the average recovery in the Large  
 22 Claims pool is \$74,460, significantly more than the average recovery of claimants in the Small  
 23 Claims pool. *Id.* See also, Lake Decl. at ¶30.

25 For both administrative reasons, *e.g.*, the much smaller number in the Large Claimant pool,  
 26 and equitable reasons, *e.g.*, the much lower recovery rate per CEU for this group, Co-Lead Counsel  
 27 and the Attorneys General have agreed to recommend that settlement fund payments still to be  
 28

1 received from Mosel should be distributed *pro rata* to Large Claimants in a single supplemental  
2 future distribution

3 **V. CONCLUSION**

4 For the foregoing reasons, Counsel respectfully request the Court authorize distribution of  
5 the settlement funds in accordance with the [Proposed] Order filed herewith.

6 Dated: May 4, 2016

7 COOPER & KIRKHAM, P.C.

8 By: /s/ Josef D. Cooper  
9 Josef D. Cooper

10 Josef D. Cooper (53015)  
11 Tracy R. Kirkham (69913)  
12 John D. Bogdanov (215830)  
13 COOPER & KIRKHAM, P.C.  
14 357 Tehama Street, Second Floor  
15 San Francisco, CA 94103  
16 Telephone: (415) 788-3030  
17 Facsimile: (415) 882-7040  
18 jdc@coopkirk.com

19 Timothy D. Battin  
20 Christopher V. Le  
21 STRAUS & BOIES, LLP  
22 4041 University Drive  
23 Fifth Floor  
24 Fairfax, VA 22030  
25 Telephone: (703) 764-8700  
26 Facsimile: (703) 764-8704  
27 tbattin@straus-boies.com

28 Daniel J. Mogin (95624)  
29 THE MOGIN LAW FIRM, P.C.  
30 707 Broadway  
31 Suite 1000  
32 San Diego, California 92101  
33 Telephone: (619) 687-6611  
34 Facsimile: (619) 687-6610  
35 dan@moginlaw.com

36 Daniel E. Gustafson  
37 Daniel C. Hedlund  
38 GUSTAFSON GLUEK PLLC  
39 Canadian Pacific Plaza  
40 120 South Sixth Street, Suite 2600  
41 Minneapolis, MN 55402  
42 Telephone: (612) 333-8844  
43 Facsimile: (612) 339-6622

1 dgustafson@gustafsongluek.com  
2  
3

4 *Co-Lead Class Counsel for Indirect-Purchaser*  
5 *Plaintiffs*  
6  
7

8 Francis O. Scarpulla (41059)  
9 LAW OFFICES OF FRANCIS O. SCARPULLA  
10 456 Montgomery Street, 17<sup>th</sup> Floor  
11 San Francisco, CA 94104  
12 Telephone: (415) 788-7210  
Facsimile: (415) 788-0706  
fos@scarpullalaw.com

13 *Liaison Counsel, Indirect Purchaser Plaintiffs*  
14  
15

16 Terry Gross (103878)  
GROSS BELSKY ALONSO LLP  
One Sansome Street, Suite 3670  
San Francisco, California 94104  
Telephone: (415) 544-0200  
Facsimile: (415) 544-0201  
terry@gba-law.com

17 *Chair, Indirect Purchaser Plaintiffs' Executive*  
18 *Committee*  
19  
20

21 Dated: May 4, 2016

22 KAMALA D. HARRIS  
Attorney General of California

23 By: /s/ Emilio E. Varanini  
Emilio E. Varanini

24 Kathleen Foote  
Emilio E. Varanini  
Deputy Attorney General  
Office of the Attorney General  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-3664

25 *Attorneys for the State of California as Liaison*  
26 *Counsel On Behalf of All Attorneys General*  
27  
28

1                   **ATTESTATION**

2                   Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that I have obtained concurrence in the  
3 service and filing of this document with electronic signatures from all counsel of the parties listed  
4 above.

5 Dated: May 4, 2016

/s/ Josef D. Cooper

6 Josef D. Cooper

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